IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 5TH JUNE 2007 / 15TH JYAISHTA 1929

WP(C).No. 20229 of 2005(G)

AGAINST THE ORDER IN IA 865/2005 IN
OS.125/2001 of SUB COURT, MANJERI

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PETITIONER:

M/S.SAKTHI FINANCE LIMITED,
REPRESENTED BY P.K.KRISHNAN, MANAGER AND
AUTHORISED SIGNATORY, DR.NANJAPPA ROAD,
COIMBATORE.

BY ADV. SRI.P.SANTHALINGAM
SRI.S.SHARAN

RESPONDENTS:

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1. T.MOHAMMED MUSTHAFA, S/O.T.MOHAMMED HAJI
THAYYIL HOUSE, P.O.MAKKARAPPARAMBA.

2. A.P.AZAD, S/O.MOIDEENKUTTY,
ANAPADIKKAL HOUSE, P.O.KALPAKANCHERRY.

BY ADV. SRI.K.M.SATHYANATHA MENON

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX(WPC 20229/05)

PETITIONER'S EXTS.:

EXT.P1: TRUE COPY OF THE ORDER IN I.A.865/05 IN O.S.NO.125/01 DTD. 4.6.2005 IN THE COURT OF THE SUBORDINATE JUDGE, MANJERI.

EXT.P2: TRUE COPY OF THE ORDER IN I.A.484/05 IN O.S.NO.117/01 DTD. 10.6.2005 BEFORE THE SUBORDINATE JUDGES COURT, MANJERI.

PIUS C. KURIAKOSE,J.

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W.P.(C) No.20229 of 2005

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Dated: 5th June, 2007

JUDGMENT

An application filed by the plaintiff seeking incorporation of an additional paragraph in the body of a suit for recovery of money instituted by the petitioner, a motor finance company was dismissed by the learned Subordinate Judge under Ext.P2 order. The suit was for recovery of amounts due to the petitioner-company on account of a hire purchase transaction which the respondents were having with the petitioner in respect of a vehicle. The vehicle in question, it appears, was repossessed when the respondents defaulted repayment and was sold. The suit for money was instituted on the basis that the amounts realised were not sufficient for discharging the debt due to the petitioner in full. It appears that the plaintiff filed an application for amendment only after the suit was special listed for trial. The application was certainly a highly belated one. The amendment sought for was the incorporation of an additional paragraph containing averments to the effect that proper price could not be realised by sale of the vehicle since the vehicle was not being properly maintained by the defendants and that in spite of several letters which had been sent to the defendants, they had not handed

over even the spare parts to the defendants. But significantly no amendment was sought for in respect of the relief portion of the suit or in the valuation portion. In other words, the prayers which the respondents was expected to resist will continue to be the same even after the amendment if the application is allowed. The learned Subordinate Judge dismissed the application not only on the ground of delay but also on a view that the amendment will enable the plaintiff to fill up the lacuna in the plaintiff's case and that the same will change the very nature of the defence and that if the amendment is allowed it will work out injustice to the defendants. May be the learned Subordinate Judge is right in saying that the amendment will enable the plaintiff to fill up the lacuna in the plaintiff's pleadings. But I am unable to agree with when the learned Subordinate Judge who says that amendment will change the very nature of the defence and that the amendment will result in injustice to the defendants. All amendments which do not cause prejudice to the adversary and which do not result any injustice/failure of justice are to be allowed. By the instant amendment the petitioner does not seek to displace himself from any of the admissions made by him in the original plaint nor is he enabled to overcome any significant plea

which is available to the defendants. In this way the proposed amendment will not cause any legal prejudice or injustice. There will be some inconvenience for the defendants and the petitioner should have filed the application on time, i.e., before the suit was special listed for trial. Ext.P2 was a case where a similar amendment was sought for in another case. But in that case it appears that the application was filed even before the suit was special listed for trial. Under Ext.P2 the learned Subordinate Judge repelled the objections raised by the defendants in the case which include the 1st defendant in the present suit and allowing the application by imposing conditions. In the instant case also the learned Subordinate Judge could have allowed the application by imposing stringent conditions.

2. The result of the above discussion is that Ext.P1 will stand set aside and I.A.No.865 of 2005 will stand allowed as prayed for subject to the petitioner complies with the following conditions:

The petitioner pays a sum of Rs.1500/- to the respondents either directly or to the counsel appearing in this court within three weeks from today and the petitioner pays a further amount of Rs.500/- to the Kerala High Court Legal Services Committee within the aforesaid time limit. If payments are not made as above, the

amendment application will stand dismissed and Ext.P1 will stand confirmed. Once the amendment application stands allowed as directed above, the court below will grant opportunity to the respondents for filing additional written statement, if any, in the case and formulate additional issues if such issues arise and dispose of the suit in accordance with law.

The Writ Petition is allowed as above. No costs.

srd **PIUS C.KURIAKOSE, JUDGE**